

STATE OF INDIANA
ST. JOSEPH COUNTY
) SS:

MARCUS WRIGHT
Plaintiff,

vs.

THE CITY OF SOUTH BEND, INDIANA,
THE SOUTH BEND POLICE DEPARTMENT,
RONALD TEACHMAN,
CHIEF OF POLICE SCOTT RUZKOWSKI

Defendants.

IN THE ST. JOSEPH Circuit COURT

- FILED - CAUSE NO. 71 CO1-1604-CT-000212

REC'D 5/5/2016
CLERK
St. Joseph Circuit Court

) COMPLAINT - EMPLOYMENT
) DISCRIMINATION BASED ON RACE
) AND RETALIATION
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I.

NATURE OF THE ACTION

1. This action is brought by Plaintiff, LIEUTENANT MARCUS WRIGHT (hereafter LT. WRIGHT), employed by THE SOUTH BEND POLICE DEPARTMENT, which is organized and operated by THE CITY OF SOUTH BEND, former South Bend Chief of Police RONALD TEACHMAN, and current Chief of Police, SCOTT RUZKOWSKI (hereafter "Defendant", "TEACHMAN", "THE CITY", "THE DEPARTMENT", and "RUZKOWSKI") for race discrimination (Black/African American), and retaliation to wit: denial of promotions, creating a hostile work environment, and benefits and retaliation in violation of the Whistleblower Protection Act, 5 U.S.C. 2301, et seq. as amended.

2. This action is brought under the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII) and the Civil Service Reform Act, 5 U.S.C. §2101, et seq. as amended by the Whistleblower Protection Act.

Plaintiff seeks back pay, front pay and compensatory damages, as well as a declaratory judgment and injunction to restrain defendant employer from committing prohibited personnel practices, policies, customs and usages, from discriminating and retaliating against plaintiff and other employees of the THE DEPARTMENT based upon race and/or opposition to unlawful discrimination and retaliation.

Plaintiff seeks injunctive relief requiring defendant employer to take affirmative and effective steps to remove and otherwise discipline managers who have failed to comply with Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII). Plaintiff seeks further injunctive relief requiring the defendant employer to take specific actions designed, implemented and confirmed by qualified non-government consultants to ensure that all supervisory employees are adequately trained to identify, investigate and stop continuing violations of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII). Such specific actions, include, but are not limited to:

- a. allocation of significant funding and trained staff to implement all changes within two years;
- b. discipline managers who have violated the DEPARTMENT's policies and failed to meet their legal responsibility to promptly investigate complaints and to take effective action to stop and deter prohibited personnel practices against employees;
- c. establishing and strictly measuring EEO compliance as a critical element in every manager's performance standards; and
- d. mandatory and effective training for all employees and managers on discrimination and

retaliation issues; investigations and appropriate corrective actions.

II.

JURISDICTION AND VENUE

3. Jurisdiction stems from the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq., 28 U.S.C. §§ 1331, 1337, 1343, 1345 and 2401(a), which grant federal district courts jurisdiction over actions alleging unlawful and discriminatory employment practices by governmental agencies and provides for judicial review of cases involving race and/or retaliation. State courts have the inherent authority, and are competent, to adjudicate federal claims. Thus, the courts of the State of Indiana have concurrent jurisdiction to hear Title VII claims. *Yellow Freight Syst. v. Donnelly*, 494 U.S. 820 (1990). The unlawful practices alleged in this complaint occurred in the Saint Joseph County, which is situated in the Northern District of Indiana.

III.

PLAINTIFF

4. Plaintiff, LT. WRIGHT, is a citizen of the United States who has been employed as an officer of the South Bend Police Department continuously since 1995, and employed as a Detective in the South Bend Police Department's Detective Bureau for approximately 15 years. Plaintiff was promoted to the rank of Sergeant in 2000 and then to the rank of Lieutenant within the Detective Bureau, afternoon shift, in 2009. Plaintiff remains a Lieutenant within the Detective Bureau, assigned to the afternoon shift. His performance was rated satisfactory or better, at all times material to this action.

IV.

DEFENDANTS

5. Defendant, former South Bend chief of Police, RONALD TEACHMAN, was the head of an executive agency (THE DEPARTMENT) within the meaning of the Civil Service Reform Act, 5 U.S.C. 1065 and the Civil Rights Act, as amended, 42 U.S.C. 2000e-16. RONALD TEACHMAN was also an employee possessing the authority to take, direct others to take, recommend, or approve personnel action within THE DEPARTMENT. As such, defendant had the full responsibility for administration of all programs within THE DEPARTMENT, including the employment policies and practices of the South Bend Police Department and was in a position to create and implement a policy to eliminate and prevent any form of discrimination and retaliation and to provide complete relief for plaintiff. Defendant is sued in his official capacity.

Defendant, THE SOUTH BEND POLICE DEPARTMENT, is organized and operated by THE CITY OF SOUTH BEND, which have employed plaintiff continuously since 1995. Defendant, RUZKOWSKI, is currently the head of an executive agency (THE DEPARTMENT) within the meaning of the Civil Service Reform Act, 5 U.S.C. 1065 and the Civil Rights Act, as amended, 42 U.S.C. 2000e-16. RUZKOWSKI is currently an employee possessing the authority to take, direct others to take, recommend, or approve personnel action within THE DEPARTMENT, including the employment policies and practices of the South Bend Police Department and was in a position to create and implement a policy to eliminate and prevent any form of discrimination and retaliation and to provide complete relief for plaintiff. Defendant is sued in his official capacity.

V.

EXHAUSTION OF REMEDIES

6. Plaintiff, LT. Wright, filed a timely formal complaint with the South Bend Human Rights Commission, alleging racial discrimination on June 26, 2014, Case No. 24M-2014-00206. The Equal Employment Opportunity Commission (EEOC) investigated the complaint for greater than 180 days. The EEOC issued a "Right to Sue Letter" to plaintiff on January 22, 2016, which provided 90 days to file a civil action in district court. Plaintiff's EEOC Complaint has been pending for approximately two years.

VI.

STATEMENT OF FACTS

7. Plaintiff, LT. Wright, is a member of a protected group based on his race (Black/African-American).

8. Plaintiff has fully exhausted his administrative remedies.

9. Plaintiff has been employed as an officer in THE DEPARTMENT, in South Bend, Indiana for since January 5, 1995. Plaintiff was promoted to the rank of Sergeant in 2000 and assigned to the Detective Bureau in 2001. Plaintiff has held the rank of Lieutenant since 2009, when he was promoted and assigned to the afternoon shift.

10. At all times material to this action, Plaintiff's performance of his job and associated duties was satisfactory or better.

DENIAL OF PROMOTION AND EMPLOYMENT OPPORTUNITIES

11. Defendants TEACHMAN, RUZKOWSKI, THE CITY, AND THE DEPARTMENT through his/its agents, discriminated against Plaintiff in terms and conditions of employment and

promotions.

12. While TEACHMAN served as Chief of Police, similarly situated, and lesser qualified employees, not in Plaintiff's protected group were promoted from the rank of Lieutenant to the rank of Captain instead of Plaintiff or other minority officers within the department.

13. THE CITY and THE DEPARTMENT have a history of denying promotions for higher graded positions to qualified African-American officers.

14. THE CITY and THE DEPARTMENT also have a long history of disparate treatment towards Black officers in terms of denying promotions to qualified African-American officers. For instance, THE CITY and THE DEPARTMENT demoted former chief of police, Daryl Boykins,(black african/american) to captain in retaliation for Boykins efforts to discourage racism by high ranking members of THE DEPARTMENT.

15. All defendants routinely placed, and continue to place, white employees in unfilled positions on a temporary basis without opening the positions to a competitive application process. The white employees gain the necessary knowledge and skills needed to enter the position and are then allowed to hold the position due to the unfair advantage bestowed upon them over Plaintiff and other African-American employees who are forced to apply for open positions that defendants have already unofficially filled with white employees.

16. Defendants violated, their own policies and procedures for posting and selection of candidates for job vacancies for the purpose of preventing African-American employees the opportunity to seek promotion, preferable shift assignment and advancement within the DEPARTMENT.

17. During the tenure of defendant Chief of Police, RONALD TEACHMAN, three non-

minority officers were promoted from the rank of Sergeant to Lieutenant within the Detective Bureau and assigned to the day shift. Plaintiff already held the rank of Lieutenant and requested transfer from the afternoon shift to the day shift at the time of these promotions. Plaintiff possessed greater seniority and superior qualifications to each of the non-minority employees who were promoted to Lieutenant and provided positions of the day shift.

18. On February 7, 2014, defendants issued a notice to all Sergeants and Lieutenants in the South Bend Police Department seeking applicants for promotion or lateral transfer to the position of day-shift Lieutenant within the Detective Bureau. This opening was created by the retirement of Lt. Sherry Taylor (an African-American). Defendants only notified applicants of a single opening as day-shift Lieutenant, that created by the retirement of Lt. Taylor.

19. Plaintiff, a Lieutenant within the Detective Bureau, made it known to defendants that he wanted to be transferred laterally from the Detective Bureau afternoon shift to the day shift. No other Lieutenants within the Bureau applied for transfer to fill Lt. Taylor's old position on day shift. The day shift is more desirable than the afternoon shift as it allows for better work hours and conditions.

20. It has been the long standing policy, custom and practice of defendants to grant lateral transfers for employees already holding a rank before considering promoting from below. The ordinary custom and practice would have been for defendants to grant Lt. Wright's request for transfer, which would not have involved a promotion, and then invite Sergeants seeking promotion to apply for his old position as afternoon-shift Lieutenant.

21. Instead of granting plaintiff's request for transfer, TEACHMAN and the DEPARTMENT subjected him to a random and arbitrary interview process during which he was required to

interview for a rank that he had held for over six years. The candidates interviewed were graded and assigned points by the members of a three person interview panel and selected based upon a compilation of points that the three panel members assigned. This “point system” was random, subjective and arbitrary such that is allowed for blatant discrimination against minority applicants.

22. Following the discriminatory interview process, defendants promoted three non-minority Sergeants to positions of day-shift Lieutenant in the Detective Bureau. These promotions occurred following TEACHMAN’S recommendation for promotion on or about May 21, 2014.

23. Defendants forced Lt. Wright, a Detective since 2001 and a Lieutenant since 2009, to remain on the afternoon shift as the newly promoted white Lieutenants were given premium positions on the day shift. This violated the written and unwritten, longstanding policy of the South Bend Police Department which was in every instance to grant lateral transfers for officers already holding a particular rank before assigning newly promoted officers to a shift.

24. By promoting three non-minorities to fill one opening created by the retirement of an African-American employee, defendants eliminated future opportunities for minority candidates to competitively seek promotion to Lieutenant and eliminated Lt. Wright’s chances to seek a lateral transfer to the more desirable day shift.

25. Defendant TEACHMAN selected and approved the following three Caucasian-white, officers for promotion to Lieutenant to the fill position which should have been filled by the transfer of plaintiff: Anthony Bontrager, Dominic Zultanski and Amy Bennett.

26. Dominic Zultanski was also appointed to a newly created position, the leader of the “Gang Violence Intervention Unit.”

27. Defendants never announced or opened the position leader of the “Gang Violence Intervention Unit.”

28. Openings for positions as day-shift Lieutenants within the Detective Bureau are rare, and are not likely occur again during Plaintiff's career.

29. Since the selection of TEACHMAN (white) and the demotion of former chief of police, Daryl Boykins, (black) defendants have shown animus toward minority employees by promoting only white officers to the rank of Captain and Lieutenant without considering minority officers with similar experience, such as plaintiff.

VII.

FIRST CLAIM

(UNLAWFUL DISCRIMINATION BASED ON RACE)

30. Paragraphs 1 through 29 above are hereby incorporated by reference as though fully set forth in this claim.

30. Defendants have unlawfully discriminated, and continue to discriminate, against plaintiff, LT. Wright, based on his race (African-American) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 et seq. as amended.

31. Plaintiff is a member of a protected group based on his race.

32. Defendants have treated, and continue to treat, plaintiff less favorably than similarly situated employees who are not African-American.

33. Defendants have discriminated, and continue to discriminate, against plaintiff in the terms and conditions of his employment on the basis of his protected group status (African-American), in violation of Title VII.

34. Defendants have engaged in a pattern and practice of using and or violating the policies and procedures governing promotions within the DEPARTMENT to deny African-American employees promotions and other employment opportunities on the basis of their race, in violation of Title VII.

35. Plaintiff is now suffering and will continue to suffer injury as a result of defendant's discriminatory practices unless and until the Court grants relief.

VIII

SECOND CLAIM

(RETALIATION - WHISTLEBLOWER PROTECTION ACT)

36. Paragraphs 1 through 35 above are hereby incorporated by reference as though fully set forth in this claim.

37. Defendants, through their agents have retaliated against Plaintiff, *inter alia*, by denying him opportunities for employment on the basis of his having opposed unlawful practices and by filing a complaint alleging prohibited personnel practices as well as violations of laws, rules and regulations were being committed by managers in the DEPARTMENT, in violation of the Whistleblower Protection Act, 5 U.S.C. 2301, et seq. as amended.

38. Defendants, through their agents, were aware of Plaintiff's opposition to illegal practices.

39. Defendants, took adverse employment actions against Plaintiff, including failing to make promotions, training and transfers available to him.

40. Defendants have a pattern and practice of using departmental procedures to deny employees who engage in protected activities assignments, promotions, benefits and other employment opportunities in reprisal, in violation of Whistleblower Protection Act, 5 U.S.C.

§2301, et seq. as amended.

41. Plaintiff is now suffering and will continue to suffer injury and monetary damages as a result of defendants retaliatory practices unless and until the Court grants relief.

IX

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, LT. MARCUS WRIGHT, respectfully prays that this Honorable Court grant the following relief:

1. Issue a permanent injunction:
 - a. Requiring defendants to abolish discrimination and reprisal;
 - b. Requiring allocation of significant funding and trained staff to implement all changes within two years;
 - c. Requiring removal or demotion of all managers who have violated the agency's policies and failed to meet their legal responsibility to promptly investigate complaints or to take effective action to stop and deter prohibited personnel practices against employees;
 - d. Establishing and strictly measuring EEO compliance as a critical element in every manager's performance standards;
 - e. Requiring mandatory and effective training for all employees and managers on discrimination and retaliation issues, investigations and appropriate corrective actions; and,
2. Issue an order requiring Defendants to grant Plaintiff's request for transfer to the day shift to which he was entitled by virtue of his seniority, experience, work history and qualifications and long standing departmental policy.
3. For damages, for the loss of quality of life, back pay overtime compensation as plaintiff

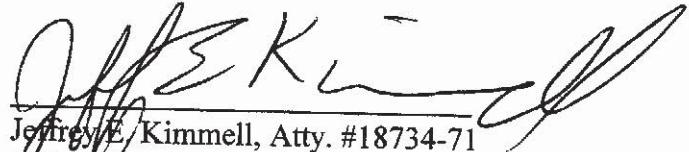
is entitled to under Title VII of the Civil Rights Act and the Rehabilitation Act;

4. For other and further damages, including compensatory damages for plaintiff emotional distress, as may be proven at trial;
5. For an order commanding defendants and each of them to cease and desist from any employment practice which discriminates against plaintiff or others on the basis of race, national origin, disability or in retaliation against the person because he complained about such discrimination;
6. For an award of costs of suit including reasonable attorney's fees, including fees under 29 U.S.C. § 216(b); and
7. For such other and further relief as the Court may consider just and proper.

Respectfully submitted,

Law Office of Jeffrey E. Kimmell

DATED: April 20, 2016 By:



Jeffrey E. Kimmell, Atty. #18734-71
218 W. Washington St., Suite 600
South Bend, IN 46601
Attorney for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a jury trial for each claim herein for which he has a right to a jury.



Jeffrey E. Kimmell